

**Representative Casey Snider** proposes the following substitute bill:

**BIG GAME AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Casey Snider**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to depredation by big game.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition provision;
- ▶ modifies provisions related to damage to cultivated crops, livestock forage, fences, or irrigation equipment;
- ▶ addresses under what circumstances a landowner or lessee may kill big game animals;
- ▶ amends provisions related to compensation for damage caused by big game animals;
- ▶ addresses appeals; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



26 [23-16-1.1](#), as enacted by Laws of Utah 2003, Chapter 228  
27 [23-16-3](#), as last amended by Laws of Utah 2011, Chapter 297  
28 [23-16-3.1](#), as enacted by Laws of Utah 2003, Chapter 228  
29 [23-16-3.2](#), as last amended by Laws of Utah 2008, Chapter 382  
30 [23-16-4](#), as last amended by Laws of Utah 2011, Chapter 297

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32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section [23-16-1.1](#) is amended to read:

34 **[23-16-1.1. Definitions.](#)**

35 As used in this chapter:

36 (1) "72 hours" means a time period that begins with the hour a request for action is  
37 made pursuant to Section [23-16-3](#) and ends 72 hours later with the exclusion of any hour that  
38 occurs on the day of a legal holiday that is on a Monday or Friday and listed in Section  
39 [63G-1-301](#).

40 [(+)] (2) "Cultivated crops" means:

41 (a) annual crops harvested from or on cleared and planted land; ~~[and]~~

42 (b) perennial orchard trees on cleared and planted land; and

43 ~~[(b)]~~ (c) crop residues that have forage value for livestock.

44 [(2)] (3) "Depredation mitigation plan" means the plan described in Subsection  
45 [23-16-3](#)(2).

46 (4) "Growing season" means the portion of a year in which local conditions permit  
47 normal plant growth.

48 (5) "Management unit" means a prescribed area of contiguous land designated by the  
49 division for the purpose of managing a species of big game animal.

50 [(3)] (6) "Mitigation review panel" means the panel created under Section [23-16-3.2](#).

51 Section 2. Section [23-16-3](#) is amended to read:

52 **[23-16-3. Damage to cultivated crops, livestock forage, fences, or irrigation](#)**  
53 **[equipment by big game animals -- Notice to division -- Depredation mitigation plan.](#)**

54 (1) (a) If on private land big game animals ~~[are damaging]~~ damage cultivated crops,  
55 livestock forage, fences, or irrigation equipment ~~[on private land]~~, the landowner or lessee shall  
56 immediately, upon discovery of the damage, request that the division take action to alleviate

the depredation problem.

(b) The landowner or lessee shall allow division personnel reasonable access to the property sustaining damage to verify and alleviate the depredation problem.

(2) (a) Within 72 hours after receiving the request for action under Subsection (1)(a), the division shall investigate the situation, and if it appears that depredation by big game animals may continue, the division shall:

(i) remove the big game animals causing depredation; or

(ii) implement a depredation mitigation plan [~~which has been~~] that is approved, in writing, by the landowner or lessee.

(b) A depredation mitigation plan may provide for any or all of the following:

(i) the scheduling of a depredation hunt;

(ii) issuing permits to the landowners or lessees, to take big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board;

(iii) allowing landowners or lessees to designate recipients who may obtain a mitigation permit to take big game animals on the landowner's or lessee's land during a general or special season hunt authorized by the Wildlife Board; or

(iv) a description of how the division will assess and compensate the landowner or lessee under Section 23-16-4 for damage to cultivated crops, fences, or irrigation equipment.

(c) (i) The division shall specify the number and sex of the big game animals that may be taken pursuant to Subsections (2)(b)(ii) and (iii).

(ii) Control efforts shall be directed toward antlerless animals, if possible.

(d) A permit issued for an antlered animal shall be approved by the division director or the director's designee.

(e) The division and the landowner or lessee shall jointly determine the number of big game animals taken pursuant to Subsection (2)(b)(ii) of which the landowner or lessee may retain possession.

(f) In determining appropriate remedial action under this Subsection (2), the division shall consider:

(i) the extent of damage experienced or expected in a single growing season; and

(ii) any revenue the landowner derives from:

(A) participation in a cooperative wildlife management unit;

88 (B) use of landowner association permits;

89 (C) use of mitigation permits; and

90 (D) charging for hunter access.

91 (3) Any fee for accessing the owner's or lessee's land shall be determined by the  
92 landowner or lessee.

93 (4) (a) If the landowner or lessee who approved the depredation mitigation plan under  
94 Subsection (2)(a)(ii) subsequently determines that the plan is not acceptable, the landowner or  
95 lessee may revoke ~~[his or her]~~ the landowner's or lessee's approval of the plan and again request  
96 that the division take action pursuant to Subsection (2)(a)(i).

97 (b) A subsequent request for action provided under Subsection (4)(a) shall be  
98 considered to be a new request for purposes of the 72-hour time limit specified in Subsection  
99 (2)(a).

100 (5) (a) The division may enter into a conservation lease with the owner or lessee of  
101 private lands for a fee or other remuneration as compensation for depredation.

102 (b) Any conservation lease entered into under this section shall provide that the  
103 claimant may not unreasonably restrict hunting on the land or passage through the land to  
104 access public lands for the purpose of hunting, if those actions are necessary to control or  
105 mitigate damage by big game animals.

106 Section 3. Section **23-16-3.1** is amended to read:

107 **23-16-3.1. Landowner or lessee authorized to kill big game animals.**

108 (1) (a) A landowner or lessee may kill big game animals damaging those cultivated  
109 crops on private land if:

110 (i) it is necessary to protect cultivated crops;

111 (ii) 72 hours has expired since ~~[notice was]~~ a request for action is given pursuant to  
112 Subsection **23-16-3**(1)(a);

113 (iii) the landowner or lessee has provided or sent written notice of an intent to kill the  
114 big game animal to the nearest regional office;

115 (iv) the landowner or lessee kills the big game animal within 90 days, or a longer  
116 period, if approved, in writing, by the division, after having requested that the division take  
117 action to prevent depredation under Subsection **23-16-3**(1)(a); and

118 (v) the killing is not prohibited by Subsection (2)(a) or (3).

(b) Immediately after killing a big game animal under Subsection (1)(a), the landowner or lessee shall notify the division of the killing.

(c) The carcass of ~~[an]~~ a big game animal killed under Subsection (1)(a) ~~[shall become]~~ is the property of the division and [shall be disposed of by the division] the division shall dispose of the carcass.

(d) ~~[Any money]~~ Money derived from the sale of big game animals killed shall be placed in the Wildlife Resources Account created in Section 23-14-13.

(e) A landowner or lessee who kills big game animals pursuant to this section shall:

(i) make reasonable effort to prevent the big game animals from wasting; and

(ii) provide the division reasonable access to the landowner's or lessee's land to retrieve and dispose of the big game animals.

(2) (a) The division director may prohibit the killing of big game animals under Subsection (1)(a) if, within 72 hours after a landowner or lessee has requested that the division take action to remove depredating big game animals, the division:

(i) determines that the restitution value of the big game animal or animals, as established under Section 23-20-4.5, is more than twice the estimated value of the cultivated crops that have been or will be damaged or consumed within a single growing season;

(ii) determines that the prohibition is consistent with the management plan established under Section 23-16-7;

(iii) notifies the landowner or lessee of the prohibition; and

(iv) offers the landowner or lessee a depredation mitigation plan.

(b) A landowner or lessee who is offered a depredation mitigation plan may:

(i) accept the plan in writing; or

(ii) refuse to accept the plan and appeal the plan, in writing, to the division director.

(3) After a landowner or lessee has killed a big game animal under Subsection (1)(a), the division director may prohibit any further killing of big game animals if:

(a) the division takes the actions described in Subsections (2)(a)(i) through (iv); ~~[and]~~ or

(b) the mitigation review panel reviews and approves the depredation mitigation plan.

Section 4. Section **23-16-3.2** is amended to read:

**23-16-3.2. Mitigation review panel.**

(1) A mitigation review panel may be convened to review ~~[the]~~:

(a) a depredation mitigation ~~[plans.]~~ plan; or

(b) division action under Section 23-16-4.

(2) Membership of the mitigation review panel shall consist of:

(a) the division director or the director's designee;

(b) (i) the commissioner of the Department of Agriculture and Food or the commissioner's designee; or

(ii) a representative of agricultural interests appointed by the commissioner of the Department of Agriculture and Food; and

(c) a representative of Utah State University Extension Service appointed by the Vice President and Dean for University Extension.

(3) (a) The division director shall convene a mitigation review panel if:

(i) a landowner or lessee appeals a depredation mitigation plan under Subsection 23-16-3.1(2)(b)(ii); ~~[or]~~

(ii) the division director requests review of a depredation mitigation plan~~[-];~~ or

(iii) the division receives a petition of an aggrieved party to a final division action under Section 23-16-4.

(b) Within five business days of an appeal under Subsection 23-16-3.1(2)(b)(ii) or a division request for review ~~[under Subsection 23-16-3.1(3)(b)]~~, the mitigation review panel shall review the depredation mitigation plan and approve or modify the plan.

(c) A mitigation review panel shall act on a petition described in Subsection (3)(a)(iii) in accordance with rules made by the Wildlife Board under Subsection 23-16-4(6).

(4) Judicial review of a mitigation review panel action ~~[shall be]~~ under this section is governed by Title 63G, Chapter 4, Administrative Procedures Act.

Section 5. Section **23-16-4** is amended to read:

**23-16-4. Compensation for damage to crops, fences, or irrigation equipment -- Limitations -- Appeals.**

(1) The division may provide compensation to claimants for damage caused by big game animals to:

(a) cultivated crops ~~[from or on cleared and planted]~~ on private land;

(b) fences on private land; or

(c) irrigation equipment on private land.

(2) To be eligible to receive compensation as provided in this section, the claimant shall:

(a) notify the division of the damage within 72 hours after the damage is discovered;

and

(b) allow division personnel reasonable access to the property to verify and alleviate the depredation problem.

(3) (a) The appraisal of the damage shall be made by the claimant and the division as soon after notification as possible.

(b) In determining damage payment, the division and claimant shall consider:

(i) the extent of damage experienced; and

(ii) any revenue the landowner derives from:

(A) participation in a cooperative wildlife management unit;

(B) use of landowner association permits;

(C) use of mitigation permits; and

(D) charging for hunter access.

(c) The division and claimant may not include speculative damages or claims of future value in an appraisal or damage payment under this section.

(d) The division may deduct revenue received by the landowner or the landowner's lessee from wildlife related activities described in Subsection (3)(b) for the lands owned or leased within the management unit where the big game animal damage occurs.

~~[(e)]~~ (e) In determining how to assess and compensate for damages to cultivated crops, the division's determination shall be based on the:

(i) estimated number of big game animals that damaged or consumed cultivated crops;

(ii) estimated quantity of cultivated crops damaged or consumed by big game animals;

~~[(i)]~~ (iii) [full replacement value in the local market] local market value of the cultivated crops that actually have been or will be damaged or consumed by big game animals; and

~~[(ii) cost of delivery of a replacement crop to the location of the damaged crop or other location that is not farther from the source of the replacement crop.]~~

(iv) other documented costs directly incurred by the landowner or lessee because of

212 damage to cultivated crops by big game animals.

213 ~~[(d)]~~ (f) If the claimant and the division are unable to agree on a fair and equitable  
214 damage payment, ~~[they]~~ the claimant and division shall designate a third party, consisting of  
215 one or more persons familiar with the crops, fences, or irrigation equipment and the type of big  
216 game animals doing the damage, to appraise the damage.

217 (4) (a) ~~[Notwithstanding Section 63J-1-504, the]~~ The total amount of compensation  
218 that may be provided by the division pursuant to this section and the total cost of fencing  
219 materials provided by the division to prevent crop damage may not exceed the legislative  
220 appropriation for fencing material and compensation for damaged crops, fences, and irrigation  
221 equipment.

222 (b) (i) ~~[Any]~~ A claim of \$1,000 or less may be paid after appraisal of the damage as  
223 provided in Subsection (3), unless the claim brings the total amount of claims submitted by the  
224 claimant in the fiscal year to an amount in excess of \$1,000.

225 (ii) ~~[Any]~~ A claim for damage to irrigation equipment may be paid after appraisal of  
226 the damage as provided in Subsection (3).

227 (c) (i) ~~[Any]~~ A claim in excess of \$1,000, or claim that brings the total amount of  
228 claims submitted by the claimant in the fiscal year to an amount in excess of \$1,000, shall be  
229 treated as follows:

230 (A) \$1,000 may be paid pursuant to the conditions of this section; and

231 (B) the amount in excess of \$1,000 may not be paid until the total amount of the  
232 approved claims of all the claimants and expenses for fencing materials for the fiscal year are  
233 determined.

234 (ii) If the total exceeds the amount appropriated by the Legislature pursuant to  
235 Subsection (4)(a), claims in excess of \$1,000, or ~~[any]~~ a claim that brings the total amount of a  
236 claimant's claims in a fiscal year to an amount in excess of \$1,000, shall be prorated.

237 (5) The division may deny or limit compensation if the claimant:

238 (a) ~~[has failed]~~ fails to exercise reasonable care and diligence to avoid the loss or  
239 minimize the damage; ~~[or]~~

240 (b) fails to provide the division reasonable access to the property;

241 (c) fails to allow the division to use reasonable mitigation tools to alleviate the damage;

242 ~~[(b)]~~ (d) ~~[has]~~ unreasonably [restricted] restricts hunting on land under the claimant's



control or passage through the land to access public lands for the purpose of hunting, after receiving written notification from the division of the necessity of allowing ~~[such]~~ the hunting or access to control or mitigate damage by big game~~[-]~~ animals; or

(e) fails to provide supporting evidence of cultivated crop values and claimed costs to the division during the damage appraisal process.

(6) (a) The Wildlife Board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with Subsection (6)(d), specifying procedures for the appeal of division actions under this section.

(b) Upon the petition of an aggrieved party to a final division action, ~~[the Wildlife Board]~~ a mitigation review panel may review the action on the record and issue an order modifying or rescinding the division action.

(c) ~~[A qualified hearing examiner may be appointed]~~ A mitigation review panel may appoint a third party designated under Subsection (3)(f) for purposes of taking evidence and making recommendations for [a board] an order of the mitigation review panel. The ~~[board]~~ mitigation review panel shall consider the recommendations of the ~~[examiner]~~ designated third party in making decisions.

(d) ~~[Board]~~ A mitigation review panel's review of final agency action and judicial review of final [board action shall be] action by a mitigation review panel is governed by Title 63G, Chapter 4, Administrative Procedures Act.